UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/500,473	02/09/2000	Maurice Clarence Kemp	MORN-0002P2	2676

7590 02/26/2003

T. LING CHWANG
JACKSON WALKER , L.L.P.
2435 NORTH CENTRAL EXPRESSWAY
SUITE 600
RICHARDSON, TX 75080

EXAMINER
MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
1761	7

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	09/500,473	KEMP ET AL.	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

Peri d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

4)☒ Claim(s) 1-78 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) 1-78 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/R strictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121, and where appropriate, applicant is also required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

I Claim 1-6, 7-11, 12,13, 39-41, drawn to a nutriment material plus a solution/suspension AGIIS and the method of making with the following patentably distinct species of nutriments (Claims 1,7, 12 , 13, and 39 are generic):

(a) human food or beverage class 426, subclass 442

(b) animal feed/ feed supplements, claim 426, subclass 2

(c) pharmaceutical, class 424

(d) biological products, class 800

II Claim 14, drawn to a method of destroying odor with a solution/suspension AGIIS, classified in class 422 subclass 5.

III Claims 15 and 16 , drawn to the method of improving organoleptic qualities of a beverage, plant or animal product by contacting with a solution/suspension AGIIS, classified in class 426 subclass 321.

IV Claims 22-23,25, drawn to a method for decreasing pH of a nutriment using a solution/suspension of AGIIS, with following patentably distinct species (claim 22 are generic):

(a) human food or beverage class 426, subclass 321

(b) animal feed/ feed supplements, claim 426, subclass 2

(c) pharmaceutical, class 424

(d) biological products, class 800

V Claims 19-21, 24-26, 30-35,65-67,53-55,56-59 drawn to a method for reducing the quantity of a biological toxin/disinfect /cleaning in a medium by contacting the medium with a solution/suspension AGIIS, classified in class 422, subclass 28.

VI Claims 27-29, drawn to a method of preserving a consumable product with a solution/suspension AGIIS, where the consumable product is one of the following patentably distinct species (claim 27 is generic):

(a) plant product , class 504

(b) an animal product, class 426, subclass 2

(c) pharmaceutical, class 422

(d) biological products, class 800

(e) medical device, class 128

VII Claims 36-38, drawn to a method of enhancing bioavailability of a nutrient in a nutriment, comprising adding a solution/suspension AGIIS to the nutriment, classified in class 424.

VIII Claims 42-46, drawn to a method of treating cutaneous anomaly on an animal with a solution/suspension AGIIS, classified in class 424, subclass 78.06.

IX Claims 47-49. drawn to a method of inducing blood clotting with a solution/suspension AGIIS, classified in class 604.

X Claims 50-52, drawn method of enhancing the adhesion of two tissues using a solution/suspension AGIIS, where the tissue is one of the following patentably distinct species (claim 50 is generic):

(a) animal tissue, class 800

(b) plant tissue, class 47, subclass 6.

XI Claims 60,61, drawn to a method of synchronizing the harvesting of plants with a solution/suspension AGIIS, classified in class 504, subclass 116.1

XII Claims 60,61, drawn to a method of preserving/improving organoleptic quality of plants by treating the plant with a solution/suspension AGIIS, classified in class 47.

XIII Claims 17,18,68-78 drawn to a method of preparing a solution/suspension AGIIS, classified in class 423.

2. The inventions are distinct, each from the other because:

3. Inventions I to XII and Invention XIII are related as combinations and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combinations as claimed do not require the particulars of the subcombination as claimed because the AGIIS solution

would not have to be formed by the method of XIII (as disclosed by applicant in the background of the invention). The subcombination has separate utility than any of the of the combinations of Inventions I to XII such as acid etching.

4. Inventions I to XII are all unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions methods drawn to adding a AGIIS to nutriment, destroying an odor, improving organoleptic properties of animal, plant and beverage *products*, decreasing pH of a nutriment, disinfecting, preserving a consumable product, enhancing bioavailability, treating cutaneous anomalies, inducing blood clotting, enhancing adhesion of tissues, synchronizing harvests, treating a plant to preserve/improve organoleptic properties.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, III,IV,V,VI, VII, VIII, IX,X,XI,XII or XIII, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Should applicant elect an invention that requires an election of species, applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicant is advised that a reply to this requirement must include an

identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

8. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

9. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers

for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761
February 11, 2003

STEVE WEINSTEIN
PRIMARY EXAMINER 1761
For M. Cano